

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOUGLAS J. HORN, et al,

Plaintiffs,

-vs-

15-CV-701

MEDICAL MARIJUANA, INC., and
DIXIE ELIXIRS AND EDIBLES,

Defendants.

Proceedings held before the
Honorable Michael J. Roemer, Robert H.
Jackson Courthouse, 2 Niagara Square,
Buffalo, New York, on July 10, 2017.

APPEARANCES:

No Appearance for Plaintiffs.

ERIC T. BORON, ESQ.,
Appearing for Medical Marijuana, Inc.
and Red Dice Holdings.

WENDY J. LINDSTROM, ESQ.,
Appearing for Dixie Elixirs and Edibles.

AUDIO RECORDER: Rosalie A. Zavarella

TRANSCRIBER: Michelle L. McLaughlin, RPR,
Court Reporter,
716/332-3560

(Proceedings recorded by electronic sound
recording, transcript produced by computer.)

1 THE CLERK: United States District Court
2 for the Western District of New York is now in
3 session. The Honorable Michael J. Roemer
4 presiding.

5 We're here on the matter of Horn, et al, versus
6 Medical Marijuana, et al, case number 15-CV-701,
7 for oral argument.

8 Counsel, please state your name for the record.

9 MR. BORON: Your Honor, good morning.
10 Eric Boron from Mura and Storm for Medical
11 Marijuana and Red Dice Holdings.

12 MS. LINDSTROM: Your Honor, Wendy
13 Lindstrom from --

14 THE COURT: You can sit down. You
15 might -- there's another microphone. You might
16 want to pull that one over.

17 MS. LINDSTROM: Thank you, your Honor.

18 THE COURT: And please speak into the
19 microphone, because we record everything. If you
20 don't speak into the microphone, then the court
21 reporter, if we later on have to transcribe it, has
22 trouble.

23 MS. LINDSTROM: So, your Honor, thank you.
24 Wendy Lindstrom from Messner Reeves representing
25 the co-defendant Dixie Elixirs LLC that was

1 erroneously sued as Dixie Elixirs and Botanicals
2 and Dixie Botanicals.

3 THE COURT: Okay. We're here on the
4 plaintiffs' motion. We have not heard from
5 plaintiffs' counsel as to why he's not here today.
6 There was no request to appear by phone or anything
7 in that regard, so we expected that he would be
8 here today.

9 I have reviewed the parties' papers. I will
10 deny the plaintiffs' motion. The case management
11 order required that the request for extension be
12 filed before the deadline expired, and plaintiff
13 failed to do that. Plaintiff has failed to show
14 good cause for not complying with the scheduling
15 order. They have not been diligent in pursuing
16 discovery. The current scheduling order will
17 remain in place. There's still plenty of time left
18 for the plaintiff to do expert discovery. And I
19 find that any further request would prejudice the
20 defendants.

21 The case is already two years old. And
22 basically the plaintiff is asking to go back to
23 square one to do discovery, and we're not going to
24 do that. And I do believe that when we initially
25 met and we found out that the plaintiff had been

1 suspended and Mr. Housh took over, I said something
2 to the effect that I'm not going to restart the
3 clock when -- if or when the plaintiffs' counsel
4 reappeared. And I meant that when I said it, and I
5 mean it now. We're not going to start over again.

6 So for all those reasons the plaintiffs' motion
7 is denied. Anything else today?

8 I apologize for you having to make this long
9 trip with plaintiffs' counsel not being here.

10 MS. LINDSTROM: Thank you.

11 THE COURT: But you did get to come to
12 Buffalo.

13 MS. LINDSTROM: I did. What a pleasure it
14 is. Thank you, your Honor.

15 THE COURT: First time?

16 MS. LINDSTROM: No, second time.

17 THE COURT: Oh.

18 MS. LINDSTROM: We took depositions on
19 this matter, so I had the pleasure of being here
20 then.

21 THE COURT: Oh, okay. When's your flight
22 back?

23 MS. LINDSTROM: 3:00 p.m. today.

24 THE COURT: Okay. Where are you from,
25 sir?

1 MR. BORON: Mura and Storms here in
2 Buffalo, your Honor.

3 THE COURT: Oh, okay. I'm sorry. Well,
4 enjoy the rest of your day.

5 MS. LINDSTROM: Thank you, your Honor.

6 MR. BORON: Your Honor, thank you for
7 denying that motion. We would like to advise the
8 Court that plaintiffs still owe us discovery and
9 really over -- well over a year that they haven't
10 produced certain documents and records that we
11 asked for. I'm just letting the Court know that.
12 We have five more days before our deadline for
13 making a motion to compel. We'll try to reach
14 Mr. Benjamin, try to get some agreement with him
15 before we contact the Court and let the Court know
16 that we do need to make that motion.

17 THE COURT: Okay.

18 MR. BORON: This week we'll work on that.

19 THE COURT: Very good. Let me know.

20 MR. BORON: Thank you, your Honor.

21 MS. LINDSTROM: Thank you, your Honor.

22 THE COURT: Okay. Have a good day.

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CERTIFICATION

I certify that the foregoing is a
correct transcription, to the best of my
ability, from the electronic sound recording
of the proceedings in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Court Reporter